COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Standard Offer Service) D.T.E. 00-66, 00-67, 00-70

Fuel Adjustment)

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REPLY COMMENTS OF THE MASSACHUSETTS DIVISION OF ENERGY RESOURCES

ON PROPOSED ADJUSTMENTS TO STANDARD OFFER SERVICE RATES

Introduction

The Massachusetts Division of Energy Resources ("DOER") appreciates having this opportunity to reply to the Comments submitted to the Department of Telecommunications and Energy (the "Department" or "DTE") on October 10, 2000 in the above-referenced dockets. As a general observation, DOER was struck by the level of consensus embodied in the Comments. Without exception, the Comments acknowledged, with varying degrees of regret, that properly documented Standard Offer Service ("SOS") fuel costs are recoverable by the respective distribution companies. The theories supporting recovery varied, but no Commenter challenged the right of distribution companies, as a legal matter, to recover properly documented increases in wholesale SOS

costs.(1) However, still in dispute are the proper administrative procedures and rate design for recovery. In these Reply Comments, DOER responds to some of the procedural and rate design suggestions offered by other Commenters.

Expeditious and Orderly Transition

One of the overriding restructuring principles of the DTE has been to move to a competitive retail market in an orderly and expeditious manner.(2) Balancing order and speed remains a challenge. In this instance, the distribution company petitioners seek to adjust SOS rates as soon as possible to reflect actual wholesale costs and eliminate deferrals. However, several Commenters have suggested that hearings are either advisable or necessary before the DTE approves the requested rate adjustments.(3) As will be discussed in more detail below, DOER agrees with several of the Commenters that the Department should systematically scrutinize whether the distribution companies have adequately mitigated customer costs including Transition Costs. However, that scrutiny need not delay adjusting SOS rates. In fact, further delay would only burden customers with higher levels of deferrals plus carrying costs. Given the size of the existing SOS deferrals, and given persistent high oil and gas prices, DOER recommends that the Department immediately approve the requested rate adjustments for a three month period, subject to further review of the underlying costs. DOER also recommends that during that three month period, the Department undertake the actions described below to assure customers and the Legislature that all reasonable steps are being taken to minimize costs to consumers during this period of high fuel costs.

Responsibility to Mitigate to the Maximum Extent Possible

A. Resolution of Matters with Significant Rate Relief Implications

1. With respect to Fitchburg, DOER endorses the Attorney General's call (Attorney Generals' Comments, D.T.E. 00-66, at 6) for the Department to rule on the Attorney General's complaint, filed in December of 1999, regarding Fitchburg's distribution rates.

2. With respect to Cambridge Electric Light Company ("CELCo"), DOER endorses the Attorney General's request (Attorney General's Comments, D.T.E. 00-70, at 7) that the Department rule on the Attorney General's claim in D.T.E. 99-90 that CELCo failed to divest its Blackstone Street generating facility and that CELCo's transition charge should be decreased accordingly.

3. With respect to CELCo and COM/Electric, DOER endorses the Attorney General's request (Attorney General's Comments, D.T.E. 00-70, at 7) for a ruling by the Department in D.T.E. 99-89 regarding the Attorney General's position that those companies failed to use appropriately the net proceeds from an earlier divestiture for mitigation purposes.

4. With respect to Boston Edison Company ("BECo"), DOER endorses the Attorney General's request for a decision in D.T.E. 97-95 regarding BECo's investment in RCN.

B. Power Purchase Agreement Mitigation

With respect to the NSTAR companies, the Department must enforce G.L. c. 164, § 1G(d)(2)(i) which requires annual reporting by the companies and review by the Department of companies' efforts to mitigate Transition Costs associated with above-market Power Purchase Agreements. The upcoming Reconciliation proceedings for the NSTAR companies would be an appropriate forum in which to review the companies' efforts in this regard and to quantify lost mitigation opportunities, if any.

C. Review of SOS Power Procurement Practices

As was noted by several Commenters, the magnitude of the SOS deferrals to date relative to actual fuel price increases raises the issue of whether some companies have mismanaged their procurement of SOS power supplies. In most instances, the companies have issued RFPs, pursuant to the Restructuring Act, and obtained Department and Federal Energy Regulatory Commission approval of the PPAs resulting from those competitive solicitations. However, NSTAR's procurement practices do not appear to conform with the Restructuring Act nor adhere to basic management practices, such as hedging, which are necessary to serve load in a volatile market. Although NSTAR has repeatedly represented to the Department that it was divesting itself of its PPAs and was entering into SOS supply contracts for the remainder of the transition period, NSTAR has done neither. The rate impact on customers of NSTAR's SOS management practices should be examined and quantified in the upcoming Reconciliation proceedings for the NSTAR companies.(4)

Assuming the proposed rate adjustments are approved for a three month period beginning November 1, 2000, the Department could complete its Reconciliation proceedings and, conceivably, rule on the outstanding issues raised by the Attorney General. By February, appropriate adjustments to the respective Transition Costs could be made and the SOS tariffs could be adjusted by February 1, 2001. In DOER's view, this procedure would meet the test of being both orderly and expeditious.

Maintain Full Low-Income Discount

In its initial Comments, DOER demonstrated that, by law, SOS fuel cost increases should not and need not be included in the inflation cap calculation. However, with respect to the low-income discount, DOER agrees with the Low-Income Customers' interpretation of G.L. c. 164, § 1F(4)(i). Fuel cost increases for SOS service should be offset by decreases in the distribution portion of the bill to the extent necessary to preserve the low-income discount in effect prior to March 1, 1998.

Respectfully submitted,

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1. 1 Although in its Comments filed in D.T.E. 00-70, the City of Cambridge urged the Department to deny NSTAR's request, it acknowledged at page 2 that "the Restructuring Act allowed for the possible approval of requests such as this one . . . ."

2. 2 Electric Industry Restructuring Plan: Model Rules and Legislative Proposal, D.P.U. 96-100, Appendix C at C-9 (December 30, 1996).

3. 3 For example, the City of Cambridge has suggested that the DTE "not only consider the documentation presented of the additional cost for fuel the company has faced but the overall picture of the financial success of the NSTAR company " including its asset sales and the closing of service repair facilities in Cambridge. Comments of the City of Cambridge at 2. The Comments submitted in all three of the above-reference dockets on behalf Action, Inc., the Massachusetts Energy Directors Association, and the Massachusetts Community Action Program Directors Association, Inc., and others (hereinafter, the "Low-Income Customers") argue that the proposed rate adjustments constitute general rate increases and therefore require adjudicatory hearings. Low-Income Customer Comments at 7. The Attorney General appears to stop short of suggesting that the proposed changes in rates cannot occur without an opportunity for hearings but asserts that a mitigation inquiry is mandated at some point in time by G.L. c. 164, § 1G(c) (4). Attorney General's Comments, D.T.E. 00-70, pp. 2 and 6; D.T.E. 00-67, pp. 2 and 6; and D.T.E. 00-66, pp. 2 and 6. The Attorney General also recommends "a generic investigation" to adopt a uniform mechanism for recovering SOS fuel costs and to consider the potential use of the Ratepayer Parity Trust Fund. Attorney General's Comments, D.T.E. 00-70, at 8; D.T.E. 00-67 at 7; and D.T.E. 00-66 at 7.

4. 4 Power supply procurement practices of distribution companies is a long-term policy issue for the Department. So long as distribution companies directly arrange for SOS and default service supplies, their procurement practices will affect the retail market. Currently there is no systematic review process for such procurements. If a distribution company presents a procurement plan and does not carry it out, there is no clear procedure for holding the company accountable. Because the supply of SOS and default service is a distribution company function in Massachusetts, DOER asks the Department to consider, in the near future, adding it to the list of functions regulated under the Service Quality Index. By so doing, distribution companies that manage SOS and default service procurement well can be rewarded; those that do not will be accountable.